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SUMMARY RECORD OF THE 1046th MEETING

Held at Headquarters, New York,
on Monday, 1 April 1991, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland (continued) (CCPR/C/58/Add.6, Add.11 and Add.12)

1. At the invitation of the Chairman, Mr. Beamish, Mr. Dykes, Mr. Halliday and Mr. Stock (United Kingdom) took places at the Committee table.

Constitutional and legal framework within which the Covenant is implemented (article 2 (2) and (3) of the Covenant) (section I of the list of issues)

2. The CHAIRMAN said that the United Kingdom delegation would answer questions held over from section I of the list of issues.

3. Mr. WENNERGREN said that it was important to clarify the United Kingdom position on self-determination for Hong Kong, a right provided for under article 1 of the International Covenant on Civil and Political Rights, article 21 of the Universal Declaration of Human Rights, and Article 1 of the Charter of the United Nations. The United Kingdom, on acceding to the Covenant, had entered reservations in respect of article 1, and, with regard to Hong Kong, in respect of article 25. In that connection he wished to know whether any initiatives had been taken in Hong Kong to develop democracy, since there had been no referendum concerning the future of the 6 million people of Hong Kong after 1997, and it appeared that no encouragement whatsoever had been given to the people of Hong Kong to aspire to the enjoyment of their human rights.

4. Although the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China would not be put into effect until July 1997, it clearly impacted on the present. The Basic Law stated that the ultimate aim was to elect the future Legislative Council by universal suffrage, although the annexes to the Law suggested that only a percentage of the members would be elected through direct elections. It was difficult to see how that approach was compatible with the Universal Declaration of Human Rights, the Covenant, or the Charter of the United Nations. The comment by the United Kingdom delegation that the political situation in Hong Kong was unique hardly seemed to constitute an adequate explanation.

5. Further, it was stated that the Special Administrative Region would enjoy a high degree of autonomy, but no explanation had been given of what that actually meant. It appeared that the right to interpret the Basic Law would lie with the Standing Committee of the National People's Congress rather than with the Hong Kong courts. It would be interesting to know whether the underlying legal philosophy originated in the United Kingdom or in the People's Republic of China. The answers to those questions would determine how independent the Hong Kong courts would actually be. While the Basic Law provided for many fundamental rights, it was not really clear who would interpret those rights and what the situation would actually be in future.

6. Mr. DIMITRIJEVIC said that he wondered to what extent the average citizen was aware of the United Kingdom's responsibilities under the Covenant and whether information relating to it was generally available.

7. He endorsed the concerns expressed by previous speakers regarding the question of Hong Kong; the question had a human rights dimension that overshadowed other questions in the context of the United Kingdom's compliance with the Covenant. In that connection the primary concern of the Committee was whether the scope of application of the Covenant would be diminished after 1997. Specifically, it was not clear what was meant by the statements in the Basic Law and the Sino-British Joint Declaration on the Question of Hong Kong that the Covenant would remain in effect as it applied to the territory. Everything should be done to implement the Covenant prior to 1997, so that there would be no basis for claiming, after that date, that the application of the Covenant in Hong Kong differed from its application everywhere else. It was essential for the United Kingdom to withdraw its reservation in respect of article 25, particularly since the United Kingdom had stated its intent to introduce representative government gradually until 1997.

8. A further concern of the Committee related to whether the commitment on the part of the People's Republic of China to maintain the application of the Covenant to Hong Kong after 1997 might prove simply to be an empty promise. The situation was delicate. However, he noted that the Joint Declaration provided for an entity termed "Hong Kong, China" to conclude agreements with international organizations, which might be an avenue to explore in terms of implementation of the Covenant. It certainly appeared that article 39 of the Basic Law, which stated that the provisions of the Covenant should remain in force in Hong Kong, meant, in particular, that article 40, concerning the reporting obligation, would remain in effect.

9. There appeared to be a contradiction between article 158 of the Basic Law, which stated that the power of interpretation of the law should be vested in the Standing Committee of the National People's Congress, and paragraph 3 (3) of the Joint Declaration, which stated that the power of final adjudication would be vested in the Hong Kong Special Administrative Region. It seemed that in reality the final say would lie with the National People's Congress of China, which would be entitled to interpret the law in a rigid, authoritative manner that would be binding on the courts. If that were the case the courts would lose the power of final adjudication provided for under the Joint Declaration. A thorough study of the relationship between the Basic Law, the Joint Declaration and the Covenant was needed.

10. Mr. PRADO VALLEJO said that while there was no human rights paradise anywhere in the world, in the context of States such as the United Kingdom the Committee was, perhaps, inclined to the view that all human rights should be guaranteed. Nevertheless, there were evidently some problems with regard to the United Kingdom's report, and he endorsed the concerns expressed by other members of the Committee.

(Mr. Prado Vallejo)

11. The numerous reservations entered by the United Kingdom distorted implementation of the Covenant, with the result that some of the rights provided thereunder remained in limbo. It was his hope that the United Kingdom would soon withdraw those reservations. Further, the Government of the United Kingdom had not so far ratified the Optional Protocol. The fact that the United Kingdom was a party to the European Convention on Human Rights did not preclude ratification of the Protocol. It was difficult to understand why the United Kingdom seemed to consider its international obligations to have been met by acceding solely to the Covenant, particularly when some opposition had been expressed in the Parliament to incorporation of the provisions of the European Convention into British domestic legislation.

12. The Committee's concern over the situation in Hong Kong was evident. Given that the People's Republic of China was not a party to the Covenant, ways must be found of guaranteeing human rights after the transfer of power in 1997. It would help if the United Kingdom withdrew its reservations in respect of Hong Kong.

13. Turning to the question of terrorism, he noted that anti-terrorist legislation in the United Kingdom gave excessive powers to the police, which impeded full implementation of the Covenant. Equally, detainees suffered abuses under the immigration legislation, as had been apparent during the recent conflict in the Persian Gulf. In a broader sense, war constituted the primary threat to the right to life guaranteed under article 6 of the Covenant, and States had a fundamental obligation to avoid warfare. The United Kingdom was the first country which had participated in the Gulf War to come before the Committee, given which he wished to bring to its attention the great suffering caused by the conflict. While the international community had taken action against the abuses of the Iraqi regime, the fact remained that there had been excessive application of force, resulting in thousands of deaths. There was now a need for urgent humanitarian assistance to protect the right to life. The United Kingdom, as a country which, throughout its history, had stood in the vanguard of those protecting freedom and human rights, should ponder those considerations.

14. Mr. WAKO, referring to section I (a), said that the United Kingdom's reservation concerning article 1 of the Covenant was drafted in such a way that its obligations under the Charter of the United Nations would prevail over its obligations under the Covenant. He would appreciate hearing the delegation's views on how the United Kingdom's obligations towards Hong Kong would be affected by its reservation concerning article 1.

15. Under Article 73 of the Charter, Governments such as that of the United Kingdom had an obligation to assist the peoples of Non-Self-Governing Territories in the progressive development of their free political institutions, and in his view, that also applied to Hong Kong. In other former colonial Territories, the colonizing Power, before granting independence, had ensured the holding of free elections on the basis of universal suffrage, leading to the establishment of a democratically elected Government. Furthermore, a Bill of Rights had been firmly entrenched in the constitutions of those countries.

(Mr. Wako)

16. With regard to Hong Kong, it appeared that, at the outset, there might have been an agreement that the legislature would be elected on the basis of universal suffrage. In addition, the Sino-British Joint Declaration contained a clear statement by China that the legislature of the Hong Kong Special Administrative Region would be constituted by means of elections.

17. Later, in 1985, the Foreign Secretary of the United Kingdom, Sir Geoffrey Howe, had stated that Hong Kong's political system would be progressively democratized so as to establish a representative Government, rooted in and acceptable to the local population, in the remaining years preceding the resumption of Chinese sovereignty. Accordingly, the initial understanding had been that by 1996, a legislature elected on the basis of universal suffrage would be in place in Hong Kong.

18. By 1990, the situation appeared to have changed, however. Article 68 of the Basic Law, while stating that the Legislative Council would be constituted by means of elections, appeared to anticipate a gradual and orderly process, suggesting that the election of all its members on the basis of universal suffrage would not be established by 1996, but some time thereafter. That raised the question of whether or not the people of Hong Kong were ready for universal suffrage. Hong Kong was far more developed, economically, socially and in other ways, than some African countries had been in the 1960s, and yet those countries, at the time of independence, had established universal suffrage. He therefore urged the United Kingdom to withdraw its reservation with regard to Hong Kong.

19. Referring to section I (c), he appealed to the United Kingdom to reconsider the issue of ratifying the Optional Protocol to the Covenant. In his view, the reasons advanced by the United Kingdom for non-ratification were insufficient. The fact that the United Kingdom was subject to the European Convention for the Protection of Human Rights and Fundamental Freedoms did not mean that the Optional Protocol was redundant, since many of the provisions of the two instruments, while similar in wording, were not on a par when it came to implementation. That was particularly true with regard to cases which came under article 14 of the Covenant. Furthermore, there were no provisions in the European Convention which paralleled those of articles 26 and 27 of the Covenant, and some of the difficult cases with which the Committee had recently been dealing had involved interpretations of precisely those articles. The ratification of the Optional Protocol by the United Kingdom would give its citizens further avenues through which to air their grievances in areas in which they felt that their rights had been violated. Furthermore, if the Optional Protocol were applicable to Hong Kong before 1996, it would be easier to argue that the system should remain in place thereafter when the Territory was ceded to Chinese sovereignty.

20. Turning to section I (d), he drew attention to the statement by the United Kingdom representative that the final form of the Hong Kong Bill of Rights might be different from the current one, a possibility which could have far-reaching implications for the rights embodied in the Covenant. Even as currently drafted, the instrument contained a number of provisions which appeared to be in conflict with those of the Covenant. Furthermore, questions arose as to the status of the

(Mr. Wako)

Hong Kong Bill of Rights, which was not part of the Constitution. Articles 3 and 4, although they were helpful in some degree, could be applied only to the extent that it was possible to do so, and he drew attention to document CCPR/C/58/Add.11, paragraph 13, in that regard. Accordingly, articles 3 and 4 were too weak to replace a provision whereby the Bill of Rights would be firmly entrenched in the Constitution.

21. In his view, article 39 of the Basic Law could be used in negotiations with China to ensure that the human rights reporting mechanisms which were currently in place would continue to exist after 1997. Since the article referred not only to the rights embodied in the Covenant but to the provisions themselves, articles 28 to 45 of the Covenant, which dealt with the reporting mechanisms, must also be included. Moreover, article 39 also referred to the international labour conventions as applied to Hong Kong. It was his understanding that Hong Kong would be permitted to continue to take part in the activities of the International Labour Organisation after 1997. In his view, continued adherence to the Covenant could be provided for in the same way, particularly if, as it appeared, the entity called "Hong Kong, China" would also be permitted to take part in the activities of the General Agreement on Tariffs and Trade and the World Meteorological Organization.

22. Other autonomous governments had been permitted by the central government to continue to accede to treaties of that nature. It was therefore not a question of whether precedents existed but simply whether thought had been given to Hong Kong's ratification of the Covenant, inasmuch as the Joint Declaration provided for a high degree of autonomy in respect of Hong Kong's executive, legislative and judicial functions.

23. One issue which required clarification was the manner in which the Joint Declaration vested final authority with regard to interpretation in the courts of the Hong Kong Special Administrative Region. If those provisions were to be enforced, then Hong Kong could ratify the Optional Protocol, and it would be possible for individual complaints to be made directly from Hong Kong to the Committee.

24. Mr. SERRANO CALDERA said that he was particularly interested in learning how the Covenant had been implemented and what its status was within the legal system of the United Kingdom. While the United Kingdom delegation had satisfactorily described the constitutional and legal framework within which the Covenant applied, concerns arose as to the degree of compatibility between the legal system and the provisions of the Covenant. Like any international legal instrument, the Covenant was intended to be universal and general in scope. A reading of the report made it clear that there were a large number of situations - ranging from multiple jurisdictions to emergency laws - which in themselves created a contradiction between the United Kingdom's legal structure and the implementation of the Covenant.

25. Within the hierarchy of law in the United Kingdom, the Covenant had the status of an ordinary law, and derogations from its provisions could take place through the enactment of other laws which had the same standing. Since the Covenant did

(Mr. Serrano Caldera)

not have the status of a constitution, the result could be that it would have no more force than a statement of good intentions which had little chance of being implemented thoroughly in practice. Taking into consideration the judicial system, the multiple jurisdictions and the problems arising from a number of dependent Territories, as well as the United Kingdom's non-ratification of the Optional Protocol, he could only wonder how effective the Covenant really was.

26. With regard to Hong Kong, he asked whether both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights would be applied once the Basic Law had entered into force and whether the current status quo would continue, so that there would be no derogations from rights and privileges of Hong Kong's citizens unless so prescribed. Another issue of concern was the possibility, according to the Basic Law, that limits could be imposed on a number of the guarantees that the Basic Law itself might establish with regard to the protection of human rights in Hong Kong. In general terms, it would be interesting to know whether there were any guarantees that the Covenant would be implemented in the future; some special machinery should be established.

27. It would also be interesting to know whether there would be any minimum guarantees within the various jurisdictions of the United Kingdom with regard to the implementation of the Covenant. Reference had been made to certain special jurisdictions in which the presumption of innocence had disappeared. That was not only one of the fundamental guarantees embodied in the Covenant, but was a fundamental guarantee of any system in respect of due process. Information on how equality before the law was guaranteed would also be appreciated.

28. Mr. HERNDL recalled that it was the Committee's policy to ask States to review their reservations to the Covenant in the hope that they might decide to withdraw some of them, and he urged the United Kingdom Government to bear that possibility in mind.

29. Turning to the question of Hong Kong, he said that every effort should be made to ensure continuing compliance with the Covenant after 1997, in particular by taking measures which would bring Hong Kong legislation more closely into line with the Covenant and subsequently make it difficult for the authorities to deviate from its provisions. However, it was clear from the terms of both the Joint Declaration and the Basic Law that that would be no easy task since, for example, article 8 of the Basic Law stated that all laws in Hong Kong could be amended by the legislature of the Hong Kong Special Administrative Region. The Basic Law itself, of course, could also be amended by the authorities. He was confident that the United Kingdom Government shared the Committee's concern with regard to the survival of the Covenant in Hong Kong after 1997.

30. Mr. HALLIDAY (United Kingdom), replying to questions members had raised, said that the Government had given careful consideration to the issues involved in incorporating the Covenant in United Kingdom domestic law, and would review its policy in the light of the Committee's views. While incorporation of the Covenant

(Mr. Halliday, United Kingdom)

would not be incompatible with United Kingdom law, it would represent a major change in the country's constitutional arrangements and, taking such a step, the Government would have to be confident that there was a net advantage to be gained. The Covenant itself explicitly allowed States parties discretion as to how they would give effect to their obligations under the Covenant. He acknowledged, however, that the position of the United Kingdom and the dependent territories vis-à-vis those obligations lacked uniformity.

31. The importance of the United Kingdom's obligations under the European Convention on Human Rights should not be underestimated. Existing arrangements allowed the Government time to take considered action aimed at implementing the decisions of the European Court of Human Rights, and he pointed out that the United Kingdom's record in respect of adverse decisions of the Court was by no means bad, especially considering that five of the Court's decisions related to a single issue and that the United Kingdom had recognized the right of individual petition to the Court as far back as 1966.

32. Some members had drawn attention to special measures taken to combat terrorism. Unless the situation changed, such measures would, indeed, continue to be necessary, but it would be quite incorrect to claim that the principle of presumption of innocence no longer obtained in some parts of the United Kingdom.

33. It was difficult to draw comparisons with other countries, since the background and circumstances of each country differed. In the case of the United Kingdom the checks and balances within the judicial system had been built up over many centuries and should not be lightly discarded or amended. In particular, it should not be concluded from the report that statutory law in the United Kingdom could only limit rights and freedoms available under common law: in many instances it strengthened and affirmed such rights and freedoms, and in that context he could mention such legislation as the Police and Criminal Evidence Act, the Race Relations Act and the legislation on equal opportunities and equal pay.

34. Incorporation of the Covenant would be a highly complex exercise, and would involve an essentially political decision based on a close examination of the ways in which existing United Kingdom law, both common law and statute law, in fact fulfilled the country's obligations under the Covenant. Debate on the issue was continuing and it was unlikely that any decision would be taken in the immediate future.

35. In reply to Mr. Myullerson, who had asked whether the norms in the Covenant, as part of customary international law, were to be considered as already having some special status in United Kingdom law, he said that he was unaware of any ruling by the courts to that effect.

36. Replying to Mr. Fodor's question on differences in the law as it applied in various parts of the United Kingdom, he said that such differences reflected long-standing traditions to which people in the regions attached great importance;

(Mr. Halliday, United Kingdom)

that there was no need to move towards a completely unified system when the different approaches were equally compatible with the United Kingdom's international obligations.

37. As to the question of public awareness of the Covenant, he said that the text was widely available, and that the periodic reports were disseminated through the libraries of both Houses of Parliament and were sent to relevant non-governmental organizations. Mention should also be made of an internal Foreign Office document on human rights in foreign policy, which had been made available to Members of Parliament, universities and other interested parties.

38. In connection with his Government's reservations to the Covenant, he said that he would convey the views expressed in the Committee, but wished to point out that he could not accept the claim that the reservations had the effect of consigning human rights in the United Kingdom to a kind of limbo: if anything, the Government tended to err on the side of caution in its approach, going to great pains to elucidate any possible incompatibilities between the provisions of the Covenant and those of domestic legislation.

39. His delegation accepted the point that the obligations undertaken by the United Kingdom under the European Convention on Human Rights were not a conclusive argument for not ratifying the Optional Protocol, and that the Covenant differed from the European Convention in certain substantive respects. Successive governments had deemed it unnecessary to give the issue priority; however, the position regarding ratification was not inflexible.

40. Mr. BEAMISH (United Kingdom) pointed out that his Government's Declaration in connection with article 1 of the Covenant did not constitute a reservation: it had been made in 1968 when the Government signed the Covenant and had been maintained in 1976 when the Covenant was ratified. It did not purport to limit the right of self-determination, and merely stated his Government's understanding that, in the event of a conflict between its obligations under article 1 and its obligations under the Charter, the latter would prevail. The Declaration had been made at a time when the right of self-determination was less clearly defined than was now the case. It referred in part to Articles 1 and 2 of the Charter, and to article 73 which, inter alia, affirmed basic obligations in respect of Non-Self-Governing Territories, and the Declaration was thus a correct statement of the legal position, although opinions might differ as to the need to retain it.

41. Turning to the question of the exercise of the right of self-determination by the people of Hong Kong, he said that due account must be taken of the special circumstances of the Territory and of the fact that much of it was subject to a lease which would expire in 1997. While Hong Kong was currently one of the dependent Territories of the United Kingdom, its unique situation had long been recognized.

42. Negotiations on the future of Hong Kong had begun on a confidential basis in 1982, and the United Kingdom Government had made it clear from the outset that any

(Mr. Beamish, United Kingdom)

arrangement must be acceptable to the population. Following the signing of the Joint Declaration in 1984 an Assessment Office had been established to evaluate the views of the people of Hong Kong, who were found to be largely in favour of the text. The Chinese Government had appointed a Basic Law Drafting Committee consisting of 59 members, 23 of them from Hong Kong, and a Basic Law Consultative Committee (BLCC) consisting exclusively of Hong Kong representatives had also been set up to determine public opinion in the Territory with regard to the draft Basic Law. The people of Hong Kong had thus been extensively consulted on all aspects of their future.

43. The system of Government in Hong Kong had developed in response to the circumstances of the Territory, and had evolved from a network of boards and committees to a more representative structure, and by 1984 non-official members of the Legislative Council were in the majority. At that time, however, all members were appointed rather than elected to the Council. The ensuing years had seen a cautious and gradual approach towards representative government, and substantial progress had been achieved. Recent developments in that regard were outlined in paragraph 86 of his Government's update to its third periodic report (CCPR/C/58/Add.11).

44. The Joint Declaration was a legally binding treaty which provided that all the provisions of the Covenant, including reporting obligations, would remain in force after 1997. The precise modalities would be discussed in due course, and he was grateful for the Committee's suggestions in that regard. It also provided for action to be taken by China and the United Kingdom to ensure continued application of international rights and obligations affecting Hong Kong, including the Covenant. On the question of possible breaches, the status of the Joint Declaration as an international treaty ensured that any breaches would be regarded as a very serious matter.

45. Replying to questions relating to the Optional Protocol, he said that his Government had noted the growing number of Parties to that instrument, including some of the States members of the Council of Europe which also accepted the right of individual petition under the European Convention. Most of the Territories to which the Covenant applied were within the Council of Europe system. The European Convention and the First Protocol thereto extended to Guernsey, Jersey, the Isle of Man, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, St. Helena and the Turks and Caicos Islands. Of those, all but the British Virgin Islands, the Cayman Islands and the Isle of Man accepted the right of petition under article 25 of the European Convention and the jurisdiction of the European Court under article 46. The acceptance of the right of petition had recently been renewed for a further five-year period in respect of the United Kingdom itself and also the Territories concerned. Those territories which were not so far included did not wish the right of petition to apply to them and the United Kingdom respected their position. The only territories in which the Covenant, but not the European Convention, applied were Pitcairn and Hong Kong. The Government was concentrating, in regard to the latter, on implementation of the Joint Declaration and the Bill of Rights.

46. Mr. STOCK (United Kingdom) assured members of the Committee that the Hong Kong Administration took their observations very seriously, as evidenced by the large delegation of Hong Kong officials there present and the attendance of representatives of non-governmental organizations from Hong Kong. The views of those NGOs as well were taken very seriously by the Hong Kong Administration. The Hong Kong Bill of Rights Bill 1990 reproduced the text of the Covenant as applied to Hong Kong, one reason being that the Joint Declaration stipulated that the provisions of the Covenant as applied to Hong Kong should remain in force after 1997 (CCPR/C/58/Add.11, para. 3).

47. Speaking to the specific concerns voiced by Committee members, he clarified that, indeed, the Bill of Rights was not entrenched and enjoyed the same status as any other ordinance - in other words, it could be amended or repealed. Appeals for entrenchment had been voiced in Hong Kong early on and the Administration was not insensitive to them. It would be difficult, however, to entrench the Bill of Rights through the special voting mechanisms employed in other jurisdictions. Those problems had been recognized, for example, in the Submission of the Hong Kong Bar Association to the United Nations Human Rights Committee on the Third Periodic Report on Hong Kong. One reason was that the Bill of Rights had been framed so as to embody the provisions of both the Covenant and the Joint Declaration in one instrument that would survive the 1997 transition. To that end, the Bill of Rights could not contravene the Basic Law, which provided for special voting procedures only in limited and prescribed circumstances, and which further provided that legislation could be adopted by simple majority. Laws limiting the competence of certain dependent Territory legislatures to adopt special procedure legislation would have represented yet another difficulty.

48. He wished to draw attention, however, to article 39 of the Basic Law, which stipulated that any restriction on freedom must not contravene the Covenant. He had been informed that the Government of the United Kingdom would seek to entrench the Covenant by amending letters patent, a procedure which would not be contrary to the Basic Law. Therefore, although the Bill of Rights per se would not be entrenched, the end result would be the entrenchment of the Covenant as applied in Hong Kong.

49. In response to questions by Committee members, legislative review was an ongoing process, as borne out by improvements made to the legislation from time to time, even before the Bill of Rights was introduced. He drew attention to proposals to reform police powers to stop and search and the laws on homosexuality. In addition, the Law Reform Commission was examining the rights of privacy with specific reference to the Covenant, and the question of illegitimacy. A "freeze" on existing legislation had been declared as a precautionary measure. The purpose was to prevent lacunae from arising should an existing law be struck down by the new Bill of Rights, especially in the area of law enforcement. A one-year freeze had been imposed on all existing legislation, and it could well be renewed for an additional year. A number of groups had voiced opposition to the blanket freeze and had suggested various alternatives. The Government had carefully considered those representations and its response would be made public in the very near future.

(Mr. Stock, United Kingdom)

50. In response to questions about the composition of the legislature in 1996, he said that while democracy in Hong Kong had been encouraged, in view of recent history it seemed unlikely that it would come about. In 1985, the legislature of Hong Kong had been elected for the first time. Two members of the legislature had been chosen by urban and regional councils, 10 district board members had been chosen through an electoral college and 12 members had been chosen through functional constituencies, composed of representatives of economic, professional and social groups. After the Government had issued a 1988 White Paper announcing a plan for 1991, the complexion of the legislature had changed; 14 members had been elected by the functional constituencies and 12 through the electoral college. There were 20 appointed members and 10 officials. A review of the 1988 decision, concluded in 1990, recognized the demand for more rapid political development. As a result, a new legislature to be formed in October 1991 would consist of 18 directly elected members, 21 members elected through the functional constituencies, 18 appointed members and three officials, i.e., substantially fewer officials than in the previous system.

51. On the day that the Basic Law had been promulgated, the National People's Congress of the People's Republic of China had issued a decision on the future composition of the Hong Kong Special Administrative Region. That decision prescribed a 60-member legislature - 20 to be directly elected; 30 to be elected through the functional constituencies; and 10 to be returned by the electoral committee. Elections would take place again in 1991, and after that, in June 1995. It was hoped that any disruption in the electoral system would be kept to a minimum during the 1997 transition.

52. Mr. DYKES (United Kingdom), replying to questions by Committee members, said that the Law Reform Commission in Hong Kong had been established 10 years earlier and was composed of 15 members, including the Attorney General, the Chief Justice and a law draughtsman, who was responsible for the preparation of all legislation in Hong Kong. The other 12 members included judges, academics, lawyers and eminent persons. The work was delegated, on the advice of the Attorney General and Chief Justice, to subcommittees dealing with special issues thought to represent legal problems. As indicated in the third periodic report and update, the Commission had an extremely full agenda and it was not unusual for the study of each special issue to take up to two years. The subcommittee on arrest and detention, for example, had begun its work in January 1989 and was expected to finish in 1991.

Self-determination (article 1 of the Covenant) (section II of the list of issues)

53. The CHAIRMAN read out section II of the list of issues concerning the third periodic report of the United Kingdom of Great Britain and Northern Ireland, concerning, namely (a) the prospects for a definitive resolution of the situation in Northern Ireland; and (b) plans to consult the inhabitants of Hong Kong about their attitude towards their envisaged status after 1997. He noted that replies had already been given to (b).

54. Mr. HALLIDAY (United Kingdom), referring to section II (a), noted that terrorism in Northern Ireland was a continuing problem and that the Government of the United Kingdom was still attempting to counter it. At the same time, it was intent on realizing progress on all fronts, particularly the economic, social and political front in its effort to curb terrorism. Unfortunately, terrorist elements were not always cooperative in that regard.

55. The Anglo-Irish Agreement of 1986 remained an important foundation for action, although the Governments of both the United Kingdom and the Republic of Ireland were prepared to contemplate changes in it. The Agreement was a binding treaty which stipulated that the status of the Republic of Ireland was to be determined by the democratic choice of the people of Northern Ireland. It also recognized the unique relationship between the United Kingdom and the Republic of Ireland and facilitated broader cooperation between the two Governments on a number of matters, including security measures. Negotiations within that framework had been pursued for some time, owing in large part to the complexity of the objectives fixed.

56. In his announcement of 26 March 1991, the Secretary of State for Northern Ireland had hailed the establishment of a basis for formal political talks. It represented the culmination of 14 months of preliminary exchanges between the Secretary of State, the Irish Government and the four main constitutional parties in Northern Ireland - the Alliance Party of Northern Ireland, the Social Democratic and Labour Party, the Ulster Democratic Unionist Party and the Ulster Unionist Party. The British and Irish Governments, as the two signatories to the Anglo-Irish Agreement, would be willing to consider a new, more broadly based agreement if arrived at through direct negotiation among all parties concerned. In order to allow wider political dialogue to develop, they would not hold a meeting of the Anglo-Irish Conference between two pre-specified dates. In his announcement, the Secretary of State had also indicated that discussions would focus on three main relationships: those with Northern Ireland, including the relationship between any new institutions and the Westminister Parliament; relationships among the people of the island of Ireland; and relationships between the two Governments.

57. Three sets of related discussions would take place within weeks of each other. All Northern Ireland parties would participate actively and directly in the North/South discussions. The Unionist parties wanted their participation to be formally associated with the presence of the Secretary of State and would regard themselves as members of the United Kingdom team. At the earliest possible date, substantive talks between the parties in Northern Ireland would be initiated under the chairmanship of the Secretary of State. He would propose initiation of the other two strands at such time as he deemed appropriate. The announcement by the Secretary of State had been widely welcomed in the House of Commons, which had, none the less, recognized that it marked only the beginning of a very long, difficult process.

58. Mr. AGUILAR, referring to Part III, section F, paragraph 17 of the report and the "extensive powers of consultation" in Hong Kong, mentioned by Mr. Beamish, asked for further details as to how the population had been consulted, since apparently, a plebiscite had never been taken. Specifically, it was not clear why

(Mr. Aguilar)

the population of Hong Kong Island and Kowloon had not been included, when China had relinquished them in perpetuity to the United Kingdom and they were major population centres.

59. He was concerned about the potential for discrimination in an electoral system which relied on functional constituencies. It seemed that, under that system, representatives of certain economic and professional sectors would have an unfair advantage. Lastly, referring to annex II of the Basic Law, he requested additional clarification on the breakdown of membership in the National People's Congress.

60. Referring to Part III, section C, paragraph 10 of the report, he requested clarification on the seeming contradiction in the Cayman Islands whereby legislation in contravention of the Covenant could be revoked but new laws which might also be in violation, could be adopted.

61. Mr. WAKO welcomed the fact that the people of Hong Kong had been consulted at every stage in the drafting of the Basic Law, but wondered whether the results of those consultations truly reflected the will of the people. For example, he had learned that of the 23 representatives of Hong Kong on the Basic Law Consultative Committee, two had resigned or been expelled and he wished to know why. Of those persons interviewed, only 1 per cent had claimed to have read the draft, which raised questions as to how widely it had been circulated. Moreover, 90 per cent of the people of Hong Kong had stated their preference to remain a colony of the United Kingdom over becoming independent, and only 15 per cent had favoured integration with China. The Hong Kong legislature had rejected the Basic Law only three hours after it had been adopted in China in April 1990. In the light of those reports, he wondered whether the principle of self-determination had truly been enforced.

62. Mr. MAVROMMATIS, referring to paragraph 18 of the report on the exercise of self-determination through the electoral system, asked whether consideration had been given to changing the simple majority procedure. It was his understanding that, under the British system, it was possible for a party to have a majority of votes and not be represented by a single Member of Parliament.

The meeting rose at 6.10 p.m.